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No. 02-529

# Supreme Court of the United States

TRANSMISSION AGENCY OF
NORTHERN CALIFORNIA,

*Petitioner,*

v.

SIERRA PACIFIC POWER COMPANY, BONNEVILLE
POWER ADMINISTRATION, PACIFICORP and
PORTLAND GENERAL ELECTRIC COMPANY,

*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

## BRIEF IN OPPOSITION BY SIERRA PACIFIC POWER COMPANY

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## QUESTION PRESENTED

Respondent Sierra Pacific Power Company herein addresses Petitioner's Questions Presented Nos. 3 and 4. Those questions may be restated as a single question as follows:

> *Under the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, may California law be used to establish rights to use electrical transmission facilities in Oregon and Washington and to enforce those rights through the imposition of monetary damages on the transmitting utilities, when the Federal Power Act establishes exclusive federal jurisdiction over the transmission of electric energy in interstate commerce, 16 U.S.C. § 824 (2000); when the Federal Energy Regulatory Commission ("FERC") oversees access to the facilities in question; when the rights sought to be established under California law would conflict with rights established under FERC-approved tariffs; and when the monetary damages sought under California law would interfere with the operation of FERC-approved tariffs, would burden Nevada customers' access to federally-regulated electricity markets, and would penalize federally-regulated utilities for acting in accordance with federal law?*

## CITATIONS TO THE DECISIONS BELOW

*Transmission Agency of Northern California v. Sierra Pacific Power Co.*, 295 F.3d 918 (9th Cir. 2002) (cited herein as Appendix A to the petition for writ of certiorari).

*Transmission Agency of Northern California v. Sierra Pacific Power Co.*, No. CIV S-00-1081 WBS/DAD (E.D. Cal., filed Feb. 9, 2001) (unreported) (cited herein as Appendix B to the petition for writ of certiorari).

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Sup. Ct. R. 29.6, Sierra Pacific Power Company hereby states that it a wholly-owned subsidiary of Sierra Pacific Resources, which is an investor-owned corporation. No publicly-held company owns ten percent or more of Sierra Pacific Resources.

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## SUMMARY OF ARGUMENT

The petition for writ of certiorari by Transmission Agency of Northern California ("TANC") fails to justify the Court's review of the determinations below. The petition asserts that this case raises an issue of national importance but fails to articulate that issue; the petition alleges but fails to identify a division among the circuit courts of appeal. Pet. 13. The petition seeks review merely to address alleged error below, based on theories that were resoundingly rejected below and that contradict well-established principles. Respondent Sierra Pacific Power Company ("Sierra Pacific") respectfully submits that the petition fails to warrant an exercise of the Court's discretion to grant a writ of certiorari and should be denied. *See* Sup. Ct. R. 10.

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This case began with TANC's filing of a complaint under California law, in which TANC asserted a superior right for California versus Nevada customers to use the major electrical transmission system through Oregon and Washington (the "Northwest AC Intertie"). Pet. 7-8.

The United States District Court for the Eastern District of California dismissed TANC's complaint against Sierra Pacific on grounds of federal preemption, noting that the Federal Power Act establishes exclusive federal jurisdiction over the transmission of electric energy in interstate commerce and authorizes the Federal Energy Regulatory Commission ("FERC") to oversee the use of electrical transmission facilities in interstate commerce. Pet. App. B 42a-44a (citing 16 U.S.C. §§ 824, 824j, 824k (2000)). The Eastern District held that this federal scheme precludes the adjudication of TANC's alleged transmission rights under state law. *Id.* at 49a. The United States Court of Appeals for the Ninth Circuit affirmed, reasoning that TANC's claim of right to transmission capacity is a federal matter that must be resolved within the federal scheme. Pet. App. A 20a-22a.

The lower courts' determinations rest on numerous decisions by the Court that recognize the broad scope and preemptive effect of federal jurisdiction over the transmission of electric energy in interstate commerce, including, most recently, this Court's opinion in *New York v. Federal Energy Regulatory Commission*, 535 U.S. 1, 122 S. Ct. 1012 (2002). The lower courts' determinations also implicitly reflect the Court's decisions on the constitutional dimensions of federal jurisdiction in this area. Consistent with *Public Utility Commission of Rhode Island v. Attleboro Steam & Electric Co.*, 273 U.S. 83 (1927), it would be impermissible to use California law to resolve the rights of California versus Nevada customers to use electrical transmission facilities in Oregon and Washington and thereby to reach electricity markets in the Pacific Northwest. *Id.* at 90 (state regulation of wholesale sales of electricity in interstate commerce violates the Commerce Clause of the United States Constitution, U.S. Const. art. I, § 8, cl. 3).

Faced with clear federal jurisdiction over its claim of right to transmission capacity, TANC turns to the airline industry and offers an egregious mischaracterization of the law in that area. TANC notes that its complaint under California law seeks monetary damages rather than a direct reallocation of capacity. Then, referring to "thousands" of unidentified cases in the airline industry, TANC suggests that state law is routinely used to impose monetary damages on federally-regulated activities. Pet. 12, 19-20. As revealed by the actual case precedent, state law is used to award damages only with respect to activities that are left to local control. Pet. App. A at 15a-17a. Here, rather than implicating activities left to local control, TANC's claim of right to transmission capacity goes to the heart of the federal scheme governing transmission in interstate commerce and therefore must be resolved within the federal scheme. *Id.* at 20a-22a.

TANC also offers vague, unsupported and misplaced references to the Fifth Amendment of the United States Constitution, U.S. Const. amend. V. TANC asserts that the form of relief sought in TANC's complaint (monetary damages) falls outside the scope of remedies available from FERC. Pet. 4, 20. TANC then suggests that, if TANC is precluded from seeking monetary damages under California law, TANC will be deprived of compensation and judicial redress in violation of the Fifth Amendment. *Id.* at 20-21.

Under the proper analysis, the Fifth Amendment neither guarantees the availability of particular forms of relief nor negates the supremacy of federal law. TANC's proposed imposition of damages under California law would impermissibly conflict with federal law by enforcing a claim of right to transmission capacity that has not been recognized within the federal scheme. Pet. App. B 46a, n.16; Pet. App. A 20a-21a. Whether FERC may award the particular form of relief sought by TANC is inapposite. Because Congress has asserted comprehensive federal jurisdiction over transmission in interstate commerce, TANC may not, through its prayer for relief, convert transmission access into a matter for California law.

In fact, the federal scheme provides ample opportunity for TANC to pursue its grievance and ample recourse if TANC's rights have been impaired. The same grievance that TANC packaged below as a complaint under California law is currently pending before FERC. If FERC finds that TANC's rights have been impaired, FERC may order rate adjustments or otherwise compel compliance with TANC's rights. If FERC finds that TANC's transmission rights have not been impaired, that should be the end of the story. Consistent with well-established principles of jurisprudence and preemption, TANC may not circumvent, through proceedings under state law, the federal process and federal determinations thereunder.

## STATEMENT OF THE CASE

### *1. Facts*

This case stems from the construction of a new electrical interconnection, the "Alturas Intertie," on the interstate transmission system in the western United States. The Alturas Intertie enables Nevada customers to reach the major electrical pathway through Oregon and Washington (the Northwest AC Intertie) and thereby to purchase electricity generated in the Pacific Northwest.

California customers also use the Northwest AC Intertie to purchase electricity from the Pacific Northwest; in that case, electricity is delivered over the Northwest AC Intertie and then over facilities in California known as the California-Oregon Intertie. Before construction of the Alturas Intertie, the California-Oregon Intertie represented the sole export market for electricity delivered over the Northwest AC Intertie.

The Northwest AC Intertie does not have sufficient capacity to meet all demand for service by Nevada and California customers – if that demand arises at the same time. The demand that actually arises at any particular time is a function of customers' purchasing decisions in a highly complex market.

Nevertheless, because potential competition for use of the Northwest AC Intertie now exists, a customer (whether located in Nevada or California) that wishes to rely on the availability of service over the Northwest AC Intertie must pay to reserve service. Before addition of the Alturas Intertie, as the sole export market, TANC and its fellow owners of the California-Oregon Intertie could rely on the availability of service over the Northwest AC Intertie without paying reservation charges.

### 2. *TANC's grievance*

TANC asserts a priority right for owners of the California-Oregon Intertie to use the existing capacity of the Northwest AC Intertie, such that the Californians would have first call on that capacity without reserving service. TANC describes Nevada customers' use of that capacity as a reduction in capacity available to the Californians and contends that this reduction impairs rights cognizable under California law, including property rights in the California-Oregon Intertie and rights under an agreement for the interconnection of TANC's facilities with the Northwest AC Intertie. Pet. 2-9.

### 3. *The federal scheme*

Under the Federal Power Act, FERC oversees the development of the interstate transmission grid and the provision of transmission services in interstate commerce through FERC's authority to compel new interconnections, 16 U.S.C. § 824i (2000), to compel mandatory transmission access, 16 U.S.C. §§ 824j and 824k, and to oversee the rates and terms of transmission service agreements and interconnection agreements, 16 U.S.C. § 824d (2000).

A central element of FERC's administration of the Federal Power Act is FERC's Order No. 888, which establishes requirements for non-discriminatory or "open" access to transmission facilities in interstate commerce. 61 Fed. Reg. 21,540 (1996). Order No. 888 is designed to curb the exercise of market power and to promote economically efficient electricity markets. *Id.* at 21,541.

FERC's authority under the Federal Power Act is supplemented by the statutory authority of the Bonneville Power Administration ("Bonneville"). Bonneville oversees expansion and use of the Northwest AC Intertie as part of Bonneville's mandate to market electricity from federally-funded generation facilities in the Pacific Northwest.

16 U.S.C. §§ 837b, 838b, 839b, 839c (2000). Bonneville has voluntarily filed a transmission service tariff with FERC, thereby subjecting use of the Northwest AC Intertie to regulation by FERC.

FERC regulates use of the Northwest AC Intertie through tariffs that comply with Order No. 888. Those tariffs establish all rules and procedures for obtaining service over the Northwest AC Intertie and all applicable rates. 61 Fed. Reg. at 21,541. Any use of the Northwest AC Intertie by Nevada customers rather than California customers (*i.e.*, the "reduction in capacity" about which TANC complains) necessarily occurs in accordance with those federal tariffs. The same is true of any increased cost for reserved service.

### *4. The ongoing FERC proceeding*

TANC notes that its *state law* causes of action have not been addressed by any court or agency. Pet. 4. TANC has, however, submitted the same underlying grievance to FERC. Four years ago, TANC asked FERC to impose conditions on use of the Alturas Intertie to protect TANC's alleged rights. *See Sierra Pacific Power Co.*, 86 F.E.R.C. ¶ 61,198 at 61,689 (1999). FERC declined to impose the requested conditions subject to the outcome of a full evidentiary hearing. *Id.* at 61,699. The case is currently pending decision by FERC. *See* FERC Docket No. ER99-28.

TANC's claims before FERC include TANC's breach of contract claim against FERC's sister agency, Bonneville. Although that claim is not properly before FERC, TANC had full opportunity to pursue that claim within the federal scheme as a whole. Pet. App. A 12a.[1]

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[1] The foregoing statement of the case informs the jurisdictional determinations below. Sierra Pacific preserves its objection to numerous factual and legal errors in TANC's petition that go to the merits of TANC's claims and that fall outside the scope of this proceeding.

## REASONS FOR DENYING THE PETITION

In the proceedings below, the Ninth Circuit affirmed dismissal of TANC's complaint against Sierra Pacific on grounds of federal preemption, a principle rooted in the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2. The basis for preemption is clear: TANC asserts, against federally-regulated utilities, rights on a federally-regulated transmission system that serves several states and that operates in interstate commerce. The Ninth Circuit's unassailable conclusion that TANC's claim of right is federal in nature and must be resolved solely within the federal scheme raises no novel or important issue that might warrant the Court's attention.

The doctrine of collateral estoppel underscores the lack of need for the Court's review. TANC's grievance is currently pending before FERC and is within FERC's special expertise. This resolution of TANC's grievance within the federal scheme will provide an independent basis for dismissal of TANC's state law claims.[2]

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[2] A similar analysis applies to TANC's breach of contract claim against Bonneville, which is the subject of TANC's Questions Presented Nos. 1 and 2. That claim is directed at a federal agency, is based on a FERC-filed contract that makes no mention of California law, and seeks to establish rights over a federally-regulated electrical transmission system. In addition, the central allegation underlying that claim – that the Alturas Intertie causes a reduction in capacity – is being resolved by FERC. *Sierra Pacific Power Co.*, 94 F.E.R.C. ¶ 63,019 at 65,071 (2001) (the Alturas Intertie causes no reduction in capacity), *exceptions pending*, FERC Docket No. ER99-28. In this light, TANC's state law breach of contract claim is revealed as an illegitimate attempt to circumvent the federal process. Moreover, the independent bases for dismissal of that claim (*i.e.*, federal preemption and collateral estoppel) confirm that TANC's Questions Presented Nos. 1 and 2 do not warrant review.

## A. TANC's Claim Of Right To Electrical Transmission Capacity Is A Federal Concern.

The Ninth Circuit properly held that federal oversight of transmission in interstate commerce preempts the adjudication of TANC's alleged transmission rights under California law. The Ninth Circuit's analysis starts with the Federal Power Act, in which Congress asserted exclusive federal jurisdiction over the transmission of electric energy in interstate commerce and established a scheme for federal regulation thereof. *See* Pet. App. A 14a-15a (citing *New England Power Co. v. New Hampshire*, 455 U.S. 331, 340 (1982)); 16 U.S.C. § 824(a) ("Federal regulation of . . . the transmission of electric energy in interstate commerce . . . is necessary in the public interest"); 16 U.S.C. §§ 824d, 824i, 842j and 824k.

The Court has repeatedly recognized the broad scope and preemptive effect of federal jurisdiction under the Federal Power Act. *See Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986); *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354 (1988). Most recently, in *New York v. FERC*, the Court held that federal jurisdiction over transmission in interstate commerce extends to transmission in open or "unbundled" retail markets, even though the states have historically regulated all retail electric power services. 122 S. Ct. at 1023, 1026.[3]

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[3] TANC's grievance pertains to transmission capacity that is used for interregional transfers of electricity and therefore does not implicate either (1) the proviso in the Federal Power Act that bars federal regulation of local activities that only incidentally affect interstate commerce, *see* 16 U.S.C. § 824(a) ("Federal regulation . . . to extend only to those matters which are not subject to regulation by the States"), or (2) the related question left open in *New York v. FERC* concerning federal jurisdiction over transmission in local retail markets. *See* 122 S. Ct. at 1027-28; Pet. App. A 21a n.9.

As recognized by the Ninth Circuit, rights to use transmission facilities operating in interstate commerce lie at the heart of the federal scheme, as evidenced by FERC's open access rules in Order No. 888. *See* Pet. App. A 20a. Those rules, which impose standards and procedures for the non-discriminatory allocation of transmission capacity, are FERC's primary means of promoting economic efficiency in electricity markets. *Id.* As held by the Ninth Circuit, FERC's open access rules are so fundamental to the operation of electricity markets overseen by FERC that transmission rights must be considered a matter of federal law *even aside* from FERC's statutory authority over transmission in interstate commerce. *Id.* at 20a, 21a n.9. Under the Supremacy Clause, because transmission rights are a central, federal concern, there is no room for state law in adjudicating those rights. *Id.* at 17a, 20a.

The use of state law to establish rights over the interstate transmission grid would also impermissibly conflict with the operation of federal law. Here, any allocation of capacity on the Northwest AC Intertie to Nevada customers rather than California customers – *i.e.*, the "reduction in capacity" about which TANC complains – necessarily arises in accordance with federally-approved tariffs that govern use of the Northwest AC Intertie. A determination under California law that TANC is entitled to a different allocation of capacity would conflict with rights determined under the federal tariffs and is therefore barred under the Supremacy Clause. Pet. App. A 20a-22a. *See also Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300, 310 (1988).

As an independent basis for dismissal of TANC's complaint, the use of California law to adjudicate TANC's alleged transmission rights would produce the constitutionally impermissible effects that led to enactment of the Federal Power Act. Parochial interests could distort (through monetary penalties) the allocation of transmission capacity in the Pacific Northwest and could thus burden the

operation of regional electricity markets. Consistent with longstanding precedent, the interstate flow of electricity may not be subjected to state law but, instead, must be left to exclusive federal control. *See Attleboro*, 273 U.S. at 89-90; *New England Power Co.*, 455 U.S. at 339.

## B. TANC's Prayer For Monetary Damages Does Not Convert TANC's Claim Into A Matter For State Law.

TANC's petition rests on a clearly erroneous theory: that California law may be used to affect transmission rights indirectly, through the imposition of monetary damages, as long as California law is not used directly to reallocate capacity. Pet. 4. TANC's emphasis on the form of relief misses the mark. Any relief awarded under California law would rest on an underlying determination of transmission rights. Pet. App. A 20a-21a. TANC's attempt to effectuate its alleged rights indirectly, through monetary damages, does not convert this federal issue into a matter for state law.

### 1. The federal scheme protects TANC's interests.

TANC claims a constitutional right to seek monetary damages under California law, reasoning that FERC may not award monetary damages and that the Fifth Amendment guarantees redress. Pet. 20-21. TANC's reliance on the Fifth Amendment is flawed in numerous respects, two of which are most notable here.

First, TANC confuses form of relief with the availability of redress. The Fifth Amendment does not guarantee the availability of a particular form of relief. The nature of a plaintiff's claim and the governing law define the scope of remedies. *Gibbes v. Zimmerman*, 290 U.S. 326, 332 (1933); *Charlie F. v. Bd. of Educ. of Skokie School Dist. 68*, 98 F.3d 989, 992 (7th Cir. 1996).

Second, the federal scheme provides ample redress for any impairment of TANC's transmission rights. Even assuming that FERC may not award monetary damages, FERC may adjust rates to reflect a loss of transmission capacity, *American Electric Power Service Corp.*, 49 F.E.R.C. ¶ 61,377 at 62,381 (1989), *reh'g denied*, 50 F.E.R.C. ¶ 61,192 (1990), and may require transmitting utilities to comply with a party's transmission rights, 16 U.S.C. §§ 824e(a), 825f, 825h and 825m (2000). The federal scheme also gave TANC the opportunity to seek monetary damages before the Ninth Circuit with respect to TANC's breach of contract claim against Bonneville. Nothing in this federal scheme contemplates supplemental remedies under state law. *See Keogh v. Chicago & N.W. Ry. Co.*, 260 U.S. 156, 162-63 (1922); *Campbell v. San Diego Gas & Elec. Co.*, 2001 WL 1860381 at *2 (E.D. Wash. Sept. 19, 2001) (FERC's refund authority preempts additional damages under state law).

Indeed, TANC's proposed damages would directly conflict with federal law by contradicting transmission rights established under federal tariffs, by burdening access to interstate transmission facilities, and by interfering with cost responsibility and cost recovery under federal tariffs. Further, the proposed damages would have a substantial chilling effect on future interconnections in the region, contrary to federal policy. These conflicts with federal law underscore why TANC's claim must be adjudicated within the federal scheme. *See Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311 (1981); *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959). *See also id.* at 247 (damages are a potent means of regulation).

### 2. The precedent in the airline industry shows that only harm from *locally-controlled* activities is compensable under state law.

As support for its alleged right to seek damages under California law, TANC mischaracterizes the precedent in the airline industry. According to TANC, state law is regularly used to compensate property owners for harm caused by the federally-approved operation of aircraft. Pet. 12, 20-21.

As the case precedent demonstrates, state law may be used to award compensation *in relation to activities that are left to local control.* For example, in the case on which TANC relied below, homeowners complained that the siting and management of an airport caused excessive noise at the homeowners' property and thereby reduced the value of that property. *See Greater Westchester Homeowners' Ass'n v. Los Angeles*, 26 Cal. 3d 86, 91-92 (1979). The Supreme Court of California held that the homeowners could sue the owner of the airport under state law notwithstanding federal regulation of airline noise levels. *Id.* at 98-99. The court reasoned that the federal scheme does not regulate the siting and management of airports or define the responsibilities of airport owners to their neighbors. *Id.* at 100. In short, the harm that could be compensated under state law resulted from locally-controlled activities, not from federally-approved activities as stated by TANC.

TANC's claims bear no relationship to the claims of homeowners that have been harmed by the siting of an airport. Pet. App. A 16a. TANC's claim of right to transmission capacity is directed, not at local activities, but at the operation of a federally regulated transmission system and, indeed, goes to the heart of the federal scheme. In harmony with TANC's "thousands" of airline cases, *see* Pet. 12, this federal matter must be addressed solely under federal law.

### C. TANC's Argument Under The Filed Rate Doctrine Fails To Grapple With Principles Of Federal Preemption.

TANC offers no reason to revisit the filed rate doctrine. The filed rate doctrine governs the relationship between courts and regulatory agencies; it requires the courts to respect an agency's decisions on rates within the agency's jurisdiction and on matters affecting those rates. *See Nantahala*, 476 U.S. 953. As applied by the Ninth Circuit, the courts must respect allocations of transmission capacity arising under FERC's rules because those allocations affect wholesale rates overseen by FERC. Pet. App. A 20a-22a (citing *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 579 (1981)).

Under TANC's misapplication of the filed rate doctrine: (1) TANC holds a FERC-approved allocation of transmission capacity in the form of the rating of the California-Oregon Intertie, and (2) this FERC-approved allocation constitutes a "filed rate" that may be enforced by a court applying state law. Pet. at 12, 21-24.

As a preliminary matter, TANC errs in characterizing the rating of the California-Oregon Intertie as a FERC-approved allocation of capacity. A rating is the engineering measure of the capability of a transmission facility; FERC does not establish or approve these ratings. FERC merely noted the rating of the California-Oregon Intertie when approving the interconnection agreements for the facilities that form the California-Oregon Intertie. *See Pac. Gas & Elec. Co.*, 63 F.E.R.C. ¶ 63,018 at 63,087 (1993). Even if FERC had "approved" the rating of the California-Oregon Intertie, that rating does not confer rights to use the Northwest AC Intertie.

TANC's approach is equally flawed from an analytical perspective. TANC's approach of treating *alleged* transmission rights as a "filed rate" would invite the courts to

adjudicate matters left to a regulatory agency, contrary to the purpose of the filed rate doctrine. *See Nantahala*, 476 U.S. at 963. Moreover, TANC's approach of enforcing alleged transmission rights under state law would contradict principles of federal preemption as discussed above.

### D. The Doctrine Of Collateral Estoppel Provides An Independent Basis For Dismissal Of TANC's Complaint.

Even if TANC's complaint under California law were not preempted, FERC's upcoming decision would likely dispose of the matter.

The well-established doctrine of collateral estoppel precludes relitigation of the same matter in multiple fora. *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326 (1979). Here, TANC naturally did not plead state law causes of action to FERC, but TANC presented every element of its underlying grievance to FERC, including TANC's central allegation that operation of the Alturas Intertie causes a reduction in transmission capacity available to TANC. *Sierra Pacific*, 86 F.E.R.C. at 61,689. The only matter that TANC submitted to FERC and that is not properly before FERC is TANC's legal allegation that Bonneville breached its agreements with TANC. Nevertheless, the factual predicate behind that allegation – that the Alturas Intertie causes a reduction in capacity available to TANC – is properly being resolved by FERC. Under the doctrine of collateral estoppel, TANC may not turn to another jurisdiction seeking relitigation of the same matters. *See United States v. Utah Constr. and Mining Co.*, 384 U.S. 394, 420-422 (1966); *Univ. of Tennessee v. Elliott*, 478 U.S. 788, 797-98 (1986).

The doctrine of collateral estoppel applies with particular force to the decisions of an administrative agency when the agency has jurisdiction over and has fully heard the matter. 384 U.S. at 422. Here, FERC asserted jurisdiction over TANC's grievance and, at TANC's insistence, conducted extensive hearings. Moreover, FERC has the best expertise to resolve the underlying issues, including whether TANC has incurred a reduction in capacity, whether the rating of the California-Oregon Intertie allocates capacity on the Northwest AC Intertie, whether TANC's ownership rights in the California-Oregon Intertie convey a priority right to use the Northwest AC Intertie, and whether TANC's claim of right offends FERC's open access requirements. Because FERC has the appropriate expertise and is actively resolving TANC's grievance, the Court need not attend to TANC's questions presented here.[4]

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[4] Two additional jurisdictional flaws are associated with TANC's claim that Sierra Pacific misrepresented the projected use of the Alturas Intertie to state regulators. *See* Pet. 9, Pet. App. A 23a-25a. First, TANC has raised that claim before every conceivable body – except the state regulators to whom the supposed misrepresentations were made. Second, the alleged misrepresentation was immaterial to the state regulators' limited inquiry: whether potential benefits to ratepayers justified Sierra Pacific's investment in the Alturas Intertie. Because transmission access is a matter of federal law, state regulators *could not* have conditioned their investment approval on an understanding that Sierra Pacific would limit use of the Alturas Intertie. These jurisdictional flaws provide additional bases for summary dismissal of TANC's claim and, again, underscore the lack of need for the Court's review of the questions presented.

## CONCLUSION

For the foregoing reasons, TANC's petition for writ of certiorari should be denied.

Respectfully submitted,

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